

In the High Court of Travancore-Cochin.

~~23-10-1953~~

Before ~~Present~~

The Hon'ble Shri K. I. Koshy, Chief Justice,
and

The Hon'ble Shri A. S. Menon, Judge.

A. S. No. 38 of 1950,

O.S. No. 136 of 1121 on the file of the District Court of Anjikaimal.

Appellant - defendant.

Balejirichha Marar son of Sugukkatty Issa, President, Cochin Devaswom Board on behalf of Cheralalloor Bhagavathy Devaswom.

By advocate Shri K. Achutha Menon and P.K. Achan.

Respondent - plaintiff.

Ram Pisharodi nephew of Narayana Pisharodi, Padinjare Pisharodi, Chittoor Puzom, Cheralalloor Village, Kanyakumari Taluk.

By advocate Shri V. Parameswara Menon.

This appeal coming on for final hearing on 23-10-1953
19-10-1953 and having stood over for consideration till ~~this day~~
the court delivered the following

Judgment.

(Delivered by H. S. Menon, J.)

O.S. No. 136 of 1121 of the District Court of Anjikaimal from which this appeal arises was a suit for

"a perpetual injunction restraining the Cochin Government, representing the Cheralalloor Bhagavathy Devaswom, from proceeding with the action initiated under the Revenue Recovery Act for recovery of alleged arrears of 51 chevaram claimed to be due by the plaintiff's carward and for refund to him with interest at 6% per annum of a sum of Rs. 823-6-0 due of Rs. 922-14-0 deposited by him on 2-9-1951 under protest to protect his rights therein"

on the ground that the suit property belonged to the plaintiff's carward and was held on undivided co-ownership tenure. The lower court upheld the plaintiff's contention and awarded a decree in favour of the plaintiff.

2. The history of the property is traced as follows in the judgment of the court below:-

"The suit property, owned and enjoyed by Cheruviril Patmanabha Panikker in Pandaravaka Verupattam and settled as such in his name in the Settlement of 1080, was assigned after his death by his heirs Nareyana Panikker and others by deed No. 1678 of 1099 of the Ernakulam Registry to Pedinjare Pisharath Govinda Pisharodi who in turn assigned it by deed No. 1287 of 1101 of the same registry to Kesava Pisharodi and others. In the partition deed effected as between the heirs of the latter by deed No. 1916 of 1120 of the same registry, it stands allotted to the share of plaintiff's tavazhi and remains in the possession and enjoyment of the plaintiff on behalf of his tavazhi".

The document of 1099 is Exhibit G, of 1101 is Exhibit K and of 1120 is Exhibit M. Exhibit F dated 25-10-1092 is the patra granted to Nareyana Panikker and Exhibit J dated 11-10-1099 is the subsequent patra issued in favour of Govinda Pisharodi.

3. According to the defendant the suit property belongs to the Cheranellur Bhagavathi Devaswam in jenm and the rights of the plaintiff is that of a karmam tenant, the current known and other deeds being Exhibits V and VI of 1080. It is true that at the Settlement of 1080 the property was registered as a verupattam holding and Exhibits F and J have been issued on that basis. As held by us in A.S.No. 18 of 1950 the issue of a patra like Exhibit F cannot in any way conclude the question of title as between the land-lord and his tenant. 35 Cochin 684, a judgment in which all the previous cases have been surveyed, summarizes the position as follows:-

"The object of the Settlement being to fix the assessment leviable on purnavaka lands, the Settlement Proclamation does not contemplate adjudication of private rights.....except for the purposes stated in the Proclamation the officers mentioned in section 24 have no right to decide the question of title to lands between the Government and its subjects and the private rights of parties cannot be affected by any order passed under section 24 of the Settlement Proclamation".

4. The only question therefore that really arises for consideration in this appeal is whether the suit property is covered by the karmam and other deeds, Exhibits V and VI. The description of the property as given in the plaint is:

"பூலாங்காலா சுட்டுப்பூலாக்கா
பூலாங்காலா சுட்டுப்பூலாக்கா 10 பாக்க நூ
ந் 98—ஒ மில்லியன்காலாக்கா." Sy.no. 550.

and that given in Exhibits V and VI (item 10) is:

"பூலாங்காலா சுட்டுப்பூலாக்கா
பூலாங்காலா சுட்டுப்பூலாக்கா 10 பாக்க நூ 550".

5. The description of the property in Exhibit G (item 1), in Exhibit K (item 1) and in Exhibit M (item 1) is essentially the same and leads to the irresistible conclusion that the item of property to which the suit relates is the same as the one covered by Exhibits V and VI. We can trace the words: "பூலாங்காலா சுட்டுப்பூலாக்கா 10 பாக்க" right back to 1.60 (Exhibits VII and VIII) and the consistency with which that description has been repeated throughout the history of the property cannot but be based on an identity of the plaintiff's field with the one demised under Exhibit V.

6. Learned counsel for the respondent agreed that 10 acres of paddy land in 'the locality' concerned will be about 98 cents and that if we came to the conclusion that the suit property and the item demised under Exhibit V are the same, no further question will arise except the question regarding the conclusiveness of the Settlement patta which we have discussed and dealt with in paragraph 3 above.

7. Exhibit C is the judgment of trial court in O.S.No. 292 of 1992, Exhibit D is the judgment in appeal therefrom (A.S.No. 75 of 1993) and Exhibit E is the decree in A.S. No. 75 of 1993. In that litigation the defendant sought rectification of the Settlement Registry in respect of the property. Learned counsel for the respondent rightly conceded that the decision in that litigation will not operate as res judicata and that the lower court's decision against the plaintiff on the point has to be upheld. But,

-4-

the significant circumstances as far as the plaintiff's contention in this case is concerned is the fact that the second defendant in O.S.No. 290 or 1092 was Narayana Panikker, the person in whose favour exhibit F was sighted, that he chose to remain silent and that he did not advance any of the contentions which form the foundation of the present plaint.

8. Exhibit B is one of the receipts showing payment of micheveram. The lower court has refused to draw any inference from the receipt on the ground that it has been "over-written". The receipt was in the possession of the plaintiff's lawyer and the defendant cannot be blamed for the "over-writing". Exhibit XIV (No.74) contains the counterfoil of the receipt and the counterfoil shows no such "over-writing" or any alteration whatsoever.

9. In these circumstances we cannot possibly uphold the plaintiff's contention on the basis of the Settlement Registry, the subsequent issue of a patta, and the description of the property in Exhibit T (item 22). There can be no doubt that the suit property which is delineated on the plan Exhibit A is the area of property covered by Exhibits V and VI, and that the appeal has to be allowed.

* We allow the appeal with costs.

23rd October 1953. Sd./K.L. Noshi, Chief Justice.

Sd./M.S. Menon, Judge.

(True copy)

Compared by

A.P. Abram

Underlin
Manager
~~Assistants Registrar~~
for Registrar.

As. 38/50

23/10